

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

RFA.No.361/2000

Date of Decision :5th July,2007.

Devi Saran Gupta.

...Appellant.

Versus:

State of H.P. and others.

...Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?¹ No

For the appellant : Mr. T. C. Sharma, Advocate

For Respondent-1 : Mr. C. B. Singh, Dy. Advocate
General.

Sanjay Karol, J (Oral).

The appellant has assailed the award dated 31st August, 2000 passed in Land Reference Petition No. 241 of 1993/95 titled as Devi Saran Gupta vs. State of H.P. & Others, by the District Judge, Kinnaur Civil Division at Rampur Bushahr.

Vide Notification dated 2nd May,1989 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act') , the appellant's land ad-measuring 1 Bigha 8 biswas in Khasra No.173/1, 5 biswas in Khasra No.100/1 and 2 biswas in Khasra No.68/1 situated in

¹ Whether reporters of Local Papers may be allowed to see the judgment?

Phati Thachwa, Tehsil Nirmand, District Kullu, was acquired for public purpose, namely, construction of road to village Thachwa. In terms of award dated 26th October, 1991, the Collector Land Acquisition determined the compensation of different classes of land as under:

<u>Classification of Land.</u>	<u>Rate of land per Bigha..</u>
1. Ropa Doem.	Rs.61,677.00.
2. Bakhal Awal.	Rs.27,314.00.
3. Bakhal Doem.	Rs.22,028.00
4. Bakhal Some.	Rs.10,573.00
5. Banjar and Gair Mumkin (i.e.uncultivable land)	Rs. 2,643.00."

Dis-satisfied with the award, the appellant preferred a reference petition under Section 18 of the Act which was decided in terms of the impugned award wherein it has been held that the appellant's land being Bakhal Awal, he would be entitled for enhanced compensation of market value of alleged land at the rate of Rs.75,000/- per bigha as against Rs.27,314/- awarded by the Collector. The appellant's claim for enhancement of compensation towards acquisition built up structure of the house and fruit bearing plants / trees was turned down. While so deciding, the Collector has considered the statements of PW-1 Devi Saran, PW-4 Om Dutt , PW-5 Dila Ram and also the sale deeds Exts.PW-4/A and PW-5/A. The Collector has concluded and recorded that the land in question is identical to the classification of land covered by the sale deeds Exts. PW-4/A and PW-5/A. He has also relied upon the said sale deeds to determine the market value of the land which the willing purchaser is ready to pay to the willing seller. He has held that the sale deeds pertain

to the same area and same period when the acquisition proceedings were initiated. Having relied upon the said sale deeds and determined the average price of one bigha of land in Phati Thachwa at Rs.1,24,000/-, has applied the principle of discounting factors such as location and size of the land of the exhibited sale deeds. He has applied 40% deductions to determine the market value of the acquired land and to arrive at his conclusion of awarding a sum of Rs.75,000/- in lieu of Rs.27,314/-.

Learned counsel for the appellant has submitted that having accepted the exhibited sale deeds to arrive at a fair market value, no deduction could have been applied for the reasons that the entire land was acquired for the purpose of construction of Bazeer Bowari Jhakri Road and no land was required to carry out any development as the entire land was to be used for the public purpose. Further, the appellant was not awarded compensation for 2 biswas of land underneath the house which was also acquired though compensation has been paid for the super structure only.

On the other hand, the learned counsel for the respondent argued that the deduction is totally warranted keeping in view the various factors such as the location as the acquired land was land locked without any proper ingress or egress.

During the course of hearing, learned Deputy Advocate General has fairly conceded that the land in question is situated at a distance of one furlong from the land for which the sale deeds Exts. PW-4/A and PW-5/A were exhibited. The District Judge has already arrived at a conclusion with regard to the classification of both the lands being same. I have perused the record. The lands are situated in the same area. There

is no difference in location. The acquired and the comparable lands were having similar disadvantage i.e. land locked having limited ingress and egress. It has come on record that there is an old bridge connecting the land to Rampur Town which was expanding and the land had potential of being developed as part of the town itself. The acquired land is also not such a big chunk of land so as not to fairly compare the value with the comparable land. The state has not filed any appeal.

Having accepted the sale deeds as the basis for determination of fair market value, I am of the view that no deduction could have been made as the entire land was acquired for the public purpose i.e. construction of road. The appellant produced cogent and reliable evidence for determining the market value of his land under acquisition. The sale deeds pertaining to authentic transaction have been accepted by the District Judge. I am therefore of the view that keeping in view the entire circumstances, appellants would be entitled to compensation @ Rs.1,24,000/- per bigha instead of Rs.75,000/- per bigha awarded by the District Judge. The appellant's total land is approximately 1 bigha 15 biswas (35 biswas) and he shall be entitled for compensation for the entire acquired land, including 2 biswas on which the acquired house was constructed as no compensation was paid for the same while valuing the compensation payable for the house.

During the course of the hearing, the learned counsel for the appellant did not press for enhancement of compensation for the super structure and also the compensation towards fruit bearing trees etc. Accordingly, the impugned award dated 31st August, 2000 passed by the District Judge in Land Reference Petition No. 241 of 1993/95 titled as Devi

Saran Gupta vs. State of H.P. & Others, is modified to the extent that instead of Rs.75,000/-, the appellant is entitled to compensation at the rate of Rs.1,24,000/- per bigha for the entire acquired land. Further, the appellant is also entitled to all statutory benefits on the enhanced amount of compensation in terms of the award. The appeal is accordingly allowed to the extent indicated above.

**(Sanjay Karol),
Judge.**

July 5, 2007(R)